would be presumptuous for us to say that the court should have overthrown the doctrine *stare decisis*, which, though repeatedly attacked, has nevertheless become a very powerful factor in the decisions of all courts. Indeed, the principle has had a remarkable restraining influence on the ever-present impulse and desire to change. It will be remembered that the statute had been in existence for nearly seventy years and was admittedly unfit to reach the varieties of swindling operations which that period of time had produced.

Nevertheless, the courts felt unable to adopt a modern rule which would be sufficient for modern demands, and the result is that this class of criminal cannot be punished until the Legislature is disposed to enact sufficient measures to cover the crime.

LAWS REGULATING HOURS OF LABOR OF MINORS AND WOMEN. CONSTITUTIONALITY

One can scarcely conceive of the extent to which the ever growing spirit of commercialism has stealthily pervaded the various institutions of our country. Struggling humanity, weak and helpless before the sordid desire of the few to gain at the expense of the many, has voiced its own protection through the law-making powers of several States. Moved by the desire for the welfare, comfort and health of the community—for surely a State legislature could be impelled by no smaller motive in such cases—acts have been passed, by virtue of the police power in them vested, regulating hours of employment of minors and women. And it must come with no small sense of surprise and regret to the many—surprise at the heartless attitude of the court in such matters, regret because of their fruitless effort to secure a little longer lease of life—that the highest court of our leading State should declare a law regulating the hours of labor of minors and women, to be an attempt "to arbitrarily prevent an adult female citizen from working at any time of the day that suits her," and "an infringement on her constitutional liberty to contract." In enacting such laws, legislatures are moved by no mawkish maudlin sentiment, nor do they wish to arbitrarily interfere with individual rights, or make unjust discriminations. Their desire is to protect the health and safety not only of the weaker citizens of the state but also of the unborn generations and the court of greatest dignity of such a State should, indeed, be slow to attribute to such action a motive less commendable, and to condemn as unconstitutional so salutary a measure.

In the recent case of *People v. Williams*, 81 N. E. (N. Y.) 778,

the defendant was convicted of violating the labor law of the State of New York. The section of the statute on which the information was based, reads that: "No minor under the age of eighteen years, and no female shall be employed, permitted or suffered to work in any factory in this State before six o'clock in the morning, or after nine o'clock in the evening of any day; or for more than ten hours in any one day except to make a shorter work day on the last day of the week; or for more than sixty hours in any one week or more hours in any one week than will make an average of ten hours a day for the whole number of days so worked."

The defendant, though found guilty, was discharged, in the lowest court, on a motion in arrest of judgement, the court holding that the legislative enactment was unconstitutional. This decision was affirmed on every appeal taken in the case, the appellate court so holding because it was of the opinion that such a statute was not a valid exercise of the police power but an infringement on the constitutional liberty to contract.

The principal objection to such a regulation is that it violates that provision of the constitution which declares that "no person shall be deprived of life, liberty or property without due process of law." The Illinois Supreme Court has declared such a provision unconstitutional on these grounds. The words "no female shall be employed" were construed to prohibit any manufacturer, etc., from contracting to employ, and every female from contracting to be employed, otherwise then provided for by statute. So that the right of both to contract in regard to such matters was limited and restricted. The right to contract is both a liberty and a property right. The attributes of property include not only the right to acquire, possess and protect the same, but also to make reasonable contracts in regard thereto, and the latter right is as much within the guaranty of the constitution as the former. Labor is property and the right to labor and employ labor are both protected by the constitution. Woman, being a citizen, may acquire and possess any kind of property, and being a "person" may claim the benefit of the constitutional provision. Thus is she guaranteed the right to make and enforce contracts. *Ritchie v. The People*, 155 Ill. 98.

The Illinois court, however, refuses to see any reasonable ground for the use by the legislature of its police power, and dismisses the idea in a very feeble attempt to show that such exercise of the police power is unreasonable. The State has always considered women and children as its wards to a greater or less extent. And although woman has been freed from a great many

of her common-law disabilities, she has not yet acquired a position equal to that of man. She is physically unable to stand the same hours of exhaustive labor that man is. Certain kinds of labor that might be performed by man with no evil results would soon render woman a physical wreck and reduce her to a condition in which she would be unable to bear her share of the family duties and household burdens. The State watches over its wards, and rightfully protects womankind, as a class, against such a condition. *Wenham v. State*, 65 Neb. 394. And as said by the Supreme Court of the State of Washington, "it must logically follow that that which deleteriously affects any great number of women who are the mothers of succeeding generations must necessarily affect the public welfare and the public morals." *State v. Buchanan*, 29 Wash. 602. Moreover, as the field of labor in which woman may engage is small and competition necessarily very great, the employer has such an advantage over them that they would be subject to such hardships and exactions, that the protection of the law must necessarily be invoked. *Wenham v. State*, *supra*. So the effect of such a law is not to destroy the right to contract but to reasonably regulate such right as it relates to the labor of women. Such a law does not exceed the reasonable exercise of the police power and is not unconstitutional. *Wenham v. State*, *supra*.

Again it is urged that such legislation is unconstitutional in that it denies to such persons the equal protection of the laws. It takes from the employers privileges which are allowed to other persons under the same conditions. These particular employers are prohibited from contracting as formerly they have done and as others are still allowed to do (the prohibition is generally limited to some one class of manufacturers, etc.). Such individuals are singled out of a class and burdens imposed on them that are not imposed on others of the class. In other words, it amounts to class legislation, the classification being arbitrary and unreasonable. *Ritchie v. People*, *supra*. Such would be a valid objection if both the employer and employee were adult males. In such a case they would be on an equal footing. But such is not the case when the employees are women or children, as was observed above. And so "the State must be accorded the right to guard and protect women, as a class, against such a condition, and the law in question to that extent conserves the public health and welfare." *Wenham v. State*, *supra*.

Finally it is contended that such a law is unconstitutional as it impairs the obligations of contract. In the case of *Commonwealth v. Hamilton Manufacturing Company*, 120 Mass. 383, the de-

fendant company set up as a defence to a prosecution for the violation of a statute similar to that in the recent case, that its act of incorporation was a contract with the commonwealth, and that such a statute impaired the obligations thereof; that the legal capacity to contract for all labor necessary to carry on such a business was conferred by necessary implication by an act of incorporation to manufacture cotton and woolen goods. The court, however, held that the fullest extent to which the company could contract for labor was for all lawful labor only; that it could not contract for such labor as forbidden by law; nor was it agreed that such laws as the public welfare should thereafter demand would not be passed. So no obligation of the contract with the defendant is violated by the enactment of such laws in the performance of a constitutional duty to protect the public.

While what few authorities there are are in direct conflict on the question, and while neither can be said to constitute the weight of authority, yet it would seem that the more humane view would favor the constitutionality of such legislation. The exercise, by the legislature, of its police power is clearly proper in such cases. Until the recent New York decision, Illinois alone held such legislation unconstitutional. Both decisions avoid the real issue by ignoring the main question, that is, the inability of woman and the protection afforded her by such exercise of the police power. "An adult female is not to be regarded in any other light than the man is regarded when the question relates to business pursuit or calling," says the New York court. This court is "calling a halt" which the welfare, comfort and health of society is clearly opposed to. And it is hardly to be feared that such a precedent will obtain a very great following. Yet the decision is interesting in that it shows the tendency of the times and should be a warning against certain influences which the public welfare demands should be checked.